

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: David Foster	Team: Team # 5	CCRB Case #: 200710262	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/14/2007 6:30 PM	Location of Incident: § 87(2)(b) en route to PSA 7	Precinct: 42	18 Mo. SOL 1/14/2009	EO SOL 1/14/2009	
Date/Time CV Reported Wed, 07/18/2007 2:04 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/18/2007 2:04 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Wilson Alba	09921	936109	BX/Q IM
2. SGT Lawrence Harper	03058	923932	BX/Q IM

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ionut Gheorghiu	09382	936664	BX/Q IM
2. POM Thomas Dunne	20950	936530	BX/Q IM

Officer(s)	Allegation	Investigator Recommendation
A.POM Wilson Alba	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Wilson Alba spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)
B.POM Wilson Alba	Discourtesy: At § 87(2)(b) in the Bronx, Police Officer Wilson Alba spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)
C.POM Wilson Alba	Force: At § 87(2)(b) in the Bronx, Police Officer Wilson Alba used physical force against § 87(2)(b)	§ 87(2)(b)
D.SGT Lawrence Harper	Force: At § 87(2)(b) in the Bronx, Sergeant Lawrence Harper used pepper spray against § 87(2)(b)	§ 87(2)(b)
E.SGT Lawrence Harper	Discourtesy: En route to the PSA 7 stationhouse, Sergeant Lawrence Harper spoke obscenely and/or rudely to § 87(2)(b)	§ 87(2)(b)

Synopsis

On July 14, 2007, at approximately 6:30 p.m., Police Officers Wilson Alba and Ionut Gheorghiu observed § 87(2)(b) riding a bicycle on the sidewalk at § 87(2)(b) § 87(2)(b) § 87(2)(b) in the Bronx. While PO Gheorghiu and PO Alba were issuing § 87(2)(b) a summons, § 87(2)(b)'s aunt, § 87(2)(b) approached and asked what was happening. PO Alba allegedly told § 87(2)(b) to “get the fuck back” (**allegation A**). § 87(2)(b)'s cousin, § 87(2)(b) approached and told the officers that the bicycle was too small for § 87(2)(b) to have ridden it. PO Alba allegedly responded, “Get the fuck out of my face. Mind your business” (**allegation B**). § 87(2)(b) began to walk away, but PO Alba grabbed him, picked him up, and threw him against a police truck (**allegation C**). PO Alba then allegedly put on a pair of black leather gloves and punched § 87(2)(b) in the face five to seven times. PO Alba took § 87(2)(b) to the ground and allegedly placed his forearm against the back of § 87(2)(b)'s head and handcuffed him. Sergeant Lawrence Harper allegedly pepper-sprayed § 87(2)(b) while he was in handcuffs (**allegation D**). En route to the PSA 7 stationhouse, Sgt. Harper allegedly told § 87(2)(b) to “shut the fuck up” (**allegation E**).

§ 87(2)(b), § 87(2)(g)

Summary of Complaint

§ 87(2)(b) *Complainant*

§ 87(2)(b) who is § 87(2)(b)'s mother, filed this complaint with the CCRB on July 18, 2007 (encl. 4a-c). § 87(2)(b) did not witness this incident and thus was not interviewed.

§ 87(2)(b) *Victim*

§ 87(2)(b) a § 87(2)(b)-old black male, is 5'2" tall and weighs 120 pounds. § 87(2)(b) § 87(2)(b) § 87(2)(b). On § 87(2)(b), § 87(2)(b) made statements to medical personnel, as reflected by the Ambulance Call Report (ACR; encl. 5a-b). On July 30, 2007, § 87(2)(b) was interviewed at the CCRB (encl. 5c-j). § 87(2)(b), § 87(2)(g)

At the time of the incident, § 87(2)(b) was walking along toward a pizzeria when he saw his § 87(2)(b) year-old cousin, § 87(2)(b) arguing with police officers on the sidewalk near § 87(2)(b) in the Bronx. Four uniformed police officers were present, and they were issuing § 87(2)(b) a summons. § 87(2)(b) did not hear the substance of the argument. When § 87(2)(b) approached, he heard § 87(2)(b) tell § 87(2)(b) whom § 87(2)(b) described as § 87(2)(b)'s mother but is actually § 87(2)(b)'s aunt, that the officers were issuing him a summons for riding a bicycle on the sidewalk when he had not been doing so. Sixteen to seventeen unidentified individuals were standing around, but were not interacting with the police officers. § 87(2)(b) saw the bike in question, which he knew to be the bike of his § 87(2)(b)-old cousin, § 87(2)(b). § 87(2)(b) told an officer, whom he identified as PO Wilson Alba by reading the officer's nameplate, that the bicycle was too small for § 87(2)(b) to have ridden it. This was the first thing § 87(2)(b) said to any of the officers, and they had not said anything to him before he said this. PO Alba responded, “Get the fuck out of my face. Mind your business.” § 87(2)(b) began to walk away and § 87(2)(b) told him to go to the pizzeria. At this point, the other officers were behind PO Alba, near a police truck.

When § 87(2)(b) had taken four to five steps, PO Alba grabbed him by the back of the shirt, turned him around, picked him up by the front of his shirt, and carried him with his feet off the ground toward the police truck, which was approximately ten steps away. PO Alba then threw § 87(2)(b) against the truck

such that his back hit the front of the truck. § 87(2)(b) told PO Alba, "I'm going to swing on you if you don't get out of my face." PO Alba said, "Go ahead, hit me. Give me your best shot." The other officers did not participate in this exchange in any way. § 87(2)(b) walked away to his left, toward the sidewalk, but PO Alba grabbed him by the back of his shirt again. § 87(2)(b) again threatened to "hit" PO Alba if the officer did not "get out of [his] face." PO Alba again threw § 87(2)(b) against the front bumper of the truck with his back facing the truck. At this point, PO Alba took a pair of black leather gloves from the side of his pants, put them on, and used the closed fists of both of his hands to strike § 87(2)(b) in the face, around his upper cheeks, five to seven times. As PO Alba did this, neither the officer nor § 87(2)(b) was saying anything. § 87(2)(b) did not respond in any way as PO Alba punched him.

PO Alba grabbed § 87(2)(b) with both of his hands and threw him to the ground, then placed his forearm on the back of § 87(2)(b)'s head. § 87(2)(b) was in the street at this point and hit the ground face-first. PO Alba did not say anything as he did this. An officer, likely PO Alba, then placed § 87(2)(b) in handcuffs. § 87(2)(b) did not move while he was on the ground and did not resist in any way. PO Alba did not encounter any problems in handcuffing § 87(2)(b). One of the other officers, identified through investigation as Sgt. Harper (described as a white male, 5'6" tall, muscular, black hair, wearing a goatee), pepper-sprayed § 87(2)(b) while he was lying on the ground in handcuffs. Sgt. Harper, who was standing, was approximately one step away from § 87(2)(b) and aimed the pepper spray at him. Sgt. Harper moved his arm back and forth as he sprayed, and continued to discharge pepper spray for approximately fifteen seconds. Members of the crowd were yelling angrily about what was happening from the sidewalk.

Sgt. Harper and PO Thomas Dunne (described as a white male, 5'7" tall, thin, black hair, no facial hair or glasses, mid 20s) were in the vehicle with § 87(2)(b) en route to the stationhouse. The officer in the passenger's seat, whose description matched PO Dunne but has been identified through investigation as Sgt. Harper (see "Officer Identification" section), responded to § 87(2)(b)'s complaints that the pepper spray was aggravating his asthma by saying, "Shut the fuck up. You shouldn't have been acting all tough." As a result of the incident, § 87(2)(b) suffered swelling to his face near his eyes and scratches to both of his knees. § 87(2)(b)'s father, also named § 87(2)(b), came to the stationhouse and EMTs flushed his eyes with water to mitigate the effects of the pepper spray. § 87(2)(b) was then taken by ambulance to § 87(2)(b). § 87(2)(b) was then returned to the stationhouse and released to his parents. § 87(2)(b) is not aware of what charges have been brought against him.

Results of Investigation

Civilian Witnesses

§ 87(2)(b) *Victim*
§ 87(2)(b) a § 87(2)(b)-old black female, is an aunt of § 87(2)(b) and § 87(2)(b). On an unknown date, § 87(2)(b) prepared a written statement, a copy of which § 87(2)(b) provided at the time of his interview (encl. 6a-b). On August 22, 2007, § 87(2)(b) provided a telephone statement (encl. 6c).
§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that, when § 87(2)(b) told her that he was getting a summons, § 87(2)(b) even though he had not done so, PO Alba told her to "back the fuck up." § 87(2)(b) then approached and made the comment about the bicycle being too small for § 87(2)(b). PO Alba responded by telling § 87(2)(b) to "shut up." § 87(2)(b) sucked his teeth and began to walk away, but PO Alba grabbed § 87(2)(b) by his shirt and slammed him against the police vehicle. § 87(2)(b) asked PO Alba what he was doing and informed him that § 87(2)(b) is a minor and, on top of that, has asthma. In response, PO Alba said, "So fucking what?" At this point, § 87(2)(b) went to inform § 87(2)(b)'s father, § 87(2)(b), § 87(2)(b) of what was happening. § 87(2)(b) did not see the rest of the incident. One marked police car and one marked police van were present during the incident.

It was not possible to obtain an in-person statement from § 87(2)(b) as she missed appointments she scheduled for August 24 and 30, 2007, without contacting the investigator.

§ 87(2)(b) *Witness*

On July 15, 2007, § 87(2)(b) prepared a written statement, a copy of which § 87(2)(b) provided at the time of his interview (encl. 7a). On October 5, 2007, § 87(2)(b) provided a telephone statement (encl. 7b).

At the time of the incident, § 87(2)(b) was walking along § 87(2)(b) across the street from her building, § 87(2)(b). § 87(2)(b) saw five to six uniformed officers standing around a young man, identified through investigation as § 87(2)(b) near the sidewalk on the other side of the street. A marked police van and a marked patrol car were stopped nearby. § 87(2)(b) stopped to see what was happening because she has lived in § 87(2)(b) for 40 years and knows many of the young people in the surrounding buildings. § 87(2)(b) whom § 87(2)(b) had seen before because he is the grandson of one of her neighbors but whose name she does not know, was facing northward. Two to three men outside an African market on § 87(2)(b) were watching what was happening. § 87(2)(b) could not remember the name of the market.

There appeared to be a verbal exchange between § 87(2)(b) and the officers, although § 87(2)(b) could not tell for sure due to the distance from which she was watching. § 87(2)(b) began to continue walking, but then she saw an officer, whom she identified by shield number as PO Wilson Alba, approach § 87(2)(b) from behind and to the side. § 87(2)(b) was still facing northward, while PO Alba was facing the sidewalk. PO Alba began to punch § 87(2)(b) and continued to punch him until he was on the ground. § 87(2)(b) who had his hands down as he stood but did not appear to be in handcuffs, did not fight back at any point. PO Alba punched § 87(2)(b) in the head and shoulders a total of eight to nine times. PO Alba also kicked § 87(2)(b) one to two times. § 87(2)(b) wanted to approach, but could not because of traffic on § 87(2)(b).

By the time the traffic stopped and § 87(2)(b) was able to cross § 87(2)(b) with her shopping cart, a crowd had gathered. § 87(2)(b) approached PO Alba and was able to read his shield number. The officers placed § 87(2)(b) inside the police van and drove away. § 87(2)(b) was not able to provide any contact information for any of the members of the crowd.

It was not possible to obtain an in-person statement from § 87(2)(b). When § 87(2)(b) provided her telephone statement, she stated that she would not be willing to come to the CCRB to provide a statement as she was having health problems related to recalled hamburgers. § 87(2)(b) stated that she might be willing to provide an in-person statement at her apartment or another location convenient to her, but she could not schedule an appointment at the time of the call. On October 19, 2007, the investigator informed § 87(2)(b) that he would be traveling to the Webster Houses on October 22, 2007, to speak with possible witnesses. § 87(2)(b) stated that she did not wish to provide a statement on that date because representatives of CableVision, DirectTV, and the New York City Housing Department would be visiting her apartment during that week.

Attempts to Contact Additional Civilian Witnesses

On September 28, 2007, § 87(2)(b) identified by § 87(2)(b) as a potential witness, contacted the investigator in response to "please call" letters. § 87(2)(b) stated that, when she arrived on the scene of the incident, § 87(2)(b) had already been handcuffed and placed inside the van. On October 5, 2007, the investigator contacted § 87(2)(b) by telephone. § 87(2)(b) who is § 87(2)(b)'s grandmother, had been identified as a potential witness but did not arrive on the scene of the incident until after § 87(2)(b) was taken to the stationhouse.

On October 24, 2007, a canvass was conducted at businesses along § 87(2)(b) § 87(2)(b), on the opposite side of § 87(2)(b) from the incident location (encl. 9). The investigator spoke with employees at all business with direct views of the incident location. None of the employees remembered this incident.

On August 22, 2007, the investigator attempted to contact § 87(2)(b) through § 87(2)(b) who lives in the same apartment, and left a message asking that he call. § 87(2)(b) was unable to provide a telephone number for § 87(2)(b). The investigator sent § 87(2)(b) "please call" letters on

September 5, 11, and 25, 2007. The investigator also attempted to contact the landline at his apartment on September 25, 2007, but the number had been disconnected. As of the date on which this report was written, § 87(2)(b) had made no attempt to contact the investigator.

§ 87(2)(b) stated that an individual known to him only as § 87(2)(b) who lives in Apartment § 87(2)(b) of his building, witnessed the incident. § 87(2)(b) was unable to provide any contact information for § 87(2)(b). The investigator sent § 87(2)(b) “please call” letters on September 5 and 25, 2007, but received no response. On September 25, 2007, the investigator attempted to contact § 87(2)(b) at the telephone number listed for his apartment on 411.com, but the number had been disconnected.

On September 5, 2007, the investigator contacted § 87(2)(b) to request her assistance in obtaining contact information for witnesses. § 87(2)(b) was unable to provide contact information for any witnesses but stated that she would call with this information. As of the date on which this report was written, § 87(2)(b) had not provided contact information for any additional witnesses.

Police Officer Statements

Police Officer Wilson Alba (Housing Borough Bronx/Queens Impact Response Team), Subject Officer PO Alba, a § 87(2)(b)-old Hispanic male with black hair and brown eyes, is 5’8” tall and weighs 175 pounds. On July 14, 2008, PO Alba worked from 6:00 p.m. until 2:35 a.m. PO Alba was in uniform and was assigned to Post 1, which covers the Butler and Webster Houses, with PO Ionut Gheorghiu. At the time of the incident, PO Alba and PO Gheorghiu were using a marked police van.

PO Alba made several memo book entries related to this incident (encl. 10a-c). At 7:35 p.m., one male was stopped and issued a summons by PO Gheorghiu for riding a bicycle on the sidewalk. At 7:55 p.m., one male was arrested § 87(2)(b). At 8:08 p.m., PO Alba arrived at the PSA 7 stationhouse. At § 87(2)(b), § 87(2)(b) was released to his father, § 87(2)(b).

§ 87(2)(b), § 87(2)(a) Fam. Ct. Act § 381.3

On March 13, 2008, PO Alba was interviewed at the CCRB (encl. 12a-b). At the time of the incident, he and PO Gheorghiu observed a male, identified through investigation as § 87(2)(b) riding a bicycle on the sidewalk. PO Gheorghiu and PO Alba stopped § 87(2)(b). § 87(2)(b) began to scream and curse, drawing the attention of friends and family members. Approximately ten people gathered to watch what was happening. Although PO Alba did not remember the exact statements made by § 87(2)(b) he did remember that § 87(2)(b) asked the officers why they were constantly “harassing” him. PO Gheorghiu responded by taking § 87(2)(b) to the side to calm him down. PO Gheorghiu was the primary officer to interact with § 87(2)(b). PO Alba instructed members of the crowd to move back.

A few minutes later, § 87(2)(b) s cousin, § 87(2)(b) approached, saying, “What the fuck is going on with my cousin? Why are you guys always harassing him?” § 87(2)(b) was approximately one foot away from PO Alba when he made this statement. PO Alba repeatedly said to § 87(2)(b) “Do me a favor. Move back.” § 87(2)(b) refused to move back each of the three to four times he was instructed to do so. PO Alba tapped § 87(2)(b) on the right shoulder and again said, “Do me a favor. Move back.” § 87(2)(b) said, “Don’t fucking touch me. Get the fuck off of me before I knock you out.” PO Alba said, “Do me a favor. Just go over there.” § 87(2)(b) said, “No. Fuck you.” § 87(2)(b) tensed his arms and held closed fists at his sides. PO Alba grabbed § 87(2)(b) by his shirt and placed him against the van such that § 87(2)(b) was facing him. PO Alba held § 87(2)(b) against the van. § 87(2)(b) repeatedly attempted to push PO Alba’s arm out of the way and said, “Get the fuck off before I knock you out.” PO Alba said, “What do you want to hit me for?” PO Alba stated that he held § 87(2)(b) against the van without attempting to handcuff him because he did not intend to arrest § 87(2)(b). PO Alba merely wanted § 87(2)(b) to “go on his way.”

Sgt. Lawrence Harper, who has since retired, pulled up and instructed PO Alba to arrest § 87(2)(b). PO Thomas Dunne was with Sgt. Harper. PO Alba attempted to grab § 87(2)(b)'s arms to handcuff him. § 87(2)(b) grabbed the front of PO Alba's shirt, in the chest area. PO Alba grabbed § 87(2)(b) in the shoulder area to take him to the ground, face down. § 87(2)(b) continued to resist on the ground, holding his hands in front of his chest and kicking his legs. PO Alba could not remember if § 87(2)(b)'s kicks made contact with him. PO Alba attempted to pull § 87(2)(b)'s hands behind his back without success. PO Alba stated that he believes PO Dunne assisted him in attempting to handcuff § 87(2)(b). At this point, Sgt. Harper said, "I'm going to mace you if you don't take your hands out of there." § 87(2)(b) still would not place his hands behind his back. Sgt. Harper then pepper-sprayed § 87(2)(b). § 87(2)(b) finally placed his hands behind his back and was handcuffed. PO Alba could not remember if he personally handcuffed § 87(2)(b).

A crowd of approximately 25 people had gathered. The members of the crowd were complaining about what had happened and were beginning to physically approach the officers. Because of the threatening nature of the crowd, the officers placed § 87(2)(b) and § 87(2)(b) in vehicles to transport them to the PSA 7 stationhouse. Sgt. Harper transported § 87(2)(b). PO Alba rode in the backseat of the car with § 87(2)(b). At this time, § 87(2)(b) had no visible injuries and was not complaining of any injuries aside from the effects of the pepper spray.

Sgt. Harper was the only officer to pepper-spray § 87(2)(b). PO Alba did not remember cursing at § 87(2)(b) during the incident, although he did tell § 87(2)(b) to "mind his business." PO Alba did not at any point pull § 87(2)(b) off of his feet. PO Alba did not punch § 87(2)(b) in the face. PO Alba did not place his forearm against the back of § 87(2)(b)'s head while § 87(2)(b) was on the ground. PO Alba did not hear any officer tell § 87(2)(b) to "shut the fuck up" en route to the stationhouse. After the struggle was over, PO Alba noticed that § 87(2)(b) had ripped the pocket of his shirt during the incident.

Police Officer Ionut Gheorghiu (Housing Borough Bronx/Queens Impact Response Team), Witness Officer PO Gheorghiu, a § 87(2)(b)-old white male with black hair and hazel eyes, is 5'10" tall and weighs 175 pounds. PO Gheorghiu worked from 6:00 p.m. on July 14, 2007, until 2:35 a.m. on July 15, 2007. PO Gheorghiu was in uniform and patrolled the Webster Houses with PO Alba in a marked patrol car.

PO Gheorghiu made several memo book entries related to this incident (encl. 13a-d). At 7:35 p.m., one male was stopped in front of § 87(2)(b). At 7:45 p.m., a summons was issued. At 7:55 p.m., one male was arrested by PO Alba. At § 87(2)(b), PO Gheorghiu transported PO Alba's prisoner to § 87(2)(b). At § 87(2)(b), PO Gheorghiu arrived at § 87(2)(b). At § 87(2)(b), the individual was released to his father.

On January 28, 2008, PO Gheorghiu was interviewed at the CCRB (encl. 14a-b). § 87(2)(g) When § 87(2)(b) approached, PO Gheorghiu moved to the side and focused on completing § 87(2)(b)'s summons. Thus, PO Gheorghiu was unable to describe PO Alba's interaction with § 87(2)(b) in detail. When he heard members of a crowd of 15 to 20 people that had formed screaming, PO Gheorghiu turned to his side and saw that PO Alba was on the ground, attempting to handcuff § 87(2)(b). PO Gheorghiu could not say whether § 87(2)(b) was face-up, face-down, or on his side at this time, nor could he tell if § 87(2)(b) had been handcuffed. PO Gheorghiu did not have a clear view of what was happening because police officers were obstructing his view. The only other officers present whom PO Gheorghiu was able to identify were PO Thomas Dunne and Sgt. Lawrence Harper. PO Gheorghiu finished the summons and gave it to § 87(2)(b).

§ 87(2)(b) was taken to the PSA 7 stationhouse in another car. PO Gheorghiu and PO Alba traveled to the stationhouse, as well. PO Gheorghiu accompanied § 87(2)(b) to § 87(2)(b) for treatment of the effects of pepper spray. § 87(2)(b) was not complaining of any other injuries at this time and did not have any visible injuries. PO Gheorghiu did not hear PO Alba say to § 87(2)(b) "Get the fuck out of my face. Mind your business."

Police Officer Thomas Dunne (Housing Borough Bronx/Queens Impact Response Team), Witness Officer PO Dunne, a § 87(2)(b)-old white male, is 5'11" tall and weighs 200 pounds. PO Dunne worked from 6:00 p.m. on July 14, 2007, until 2:35 a.m. on July 15, 2007. PO Dunne was in uniform and drove a marked vehicle with Sgt. Harper.

PO Dunne made several memo book entries related to this incident (encl. 15a-c). At 6:30 p.m., two males were stopped. One male was combative with PO Alba and attempted to strike officers. Sgt. Harper pepper-sprayed this male. The male was then transported to PSA 7.

On January 28, 2008, PO Dunne was interviewed at the CCRB (encl. 16a-b). At the time of the incident, Sgt. Harper and PO Dunne were driving in the vicinity of § 87(2)(b) § 87(2)(b) when they saw that PO Alba and PO Gheorghiu had stopped one male, identified through investigation as § 87(2)(b) § 87(2)(b). Sgt. Harper instructed PO Dunne to pull over as a crowd was beginning to gather. PO Gheorghiu was issuing § 87(2)(b) whom PO Dunne described as "completely calm and cooperative," a summons § 87(2)(b).

While PO Gheorghiu was completing the summons, § 87(2)(b)'s cousin, identified through investigation as § 87(2)(b) approached. § 87(2)(b) pushed his way in between PO Alba and PO Gheorghiu to stand in between the officers and § 87(2)(b). § 87(2)(b) asked the officers why they were harassing § 87(2)(b) and described the officers' actions as being "bullshit." § 87(2)(b) used a great deal of profanity, but PO Dunne could not remember his exact words.

PO Gheorghiu moved to the side with § 87(2)(b) to finish the summons, while PO Alba dealt with § 87(2)(b). PO Alba told § 87(2)(b) to leave the scene at least three times. § 87(2)(b) refused to leave and continued to say, "Why are you harassing everybody? This is bullshit." A crowd of fifteen to twenty people had gathered at this point. Members of the crowd were yelling and screaming, but PO Dunne could not remember any specific statements they made.

§ 87(2)(b) grabbed PO Alba by the arm and the breast pocket of his shirt. PO Alba had not made physical contact with § 87(2)(b) before this point. § 87(2)(b) then attempted to strike PO Alba with a closed fist in the face area. PO Dunne did not see if the blow connected with PO Alba's face. PO Alba grabbed § 87(2)(b)'s shoulders and took him to the ground. PO Alba and § 87(2)(b) both went to the ground on their sides. PO Alba got on top of § 87(2)(b) and attempted to pull § 87(2)(b)'s hands behind his back. § 87(2)(b) responded by kicking, punching, and biting. Sgt. Harper pepper-sprayed § 87(2)(b) one time. At this point, § 87(2)(b) became compliant and allowed the officers to handcuff him. No other officers assisted in handcuffing § 87(2)(b).

Members of the crowd began to throw bottles at the officers. Members of the crowd also kicked a patrol car, apparently in an attempt to break the windows. § 87(2)(b) was placed inside the vehicle driven by PO Dunne. En route to the stationhouse, § 87(2)(b) kicked the windows and doors and screamed. PO Dunne could not understand what § 87(2)(b) was saying. PO Dunne and Sgt. Harper did not respond to § 87(2)(b).

PO Dunne did not hear PO Alba curse at § 87(2)(b). PO Dunne did not see PO Alba push § 87(2)(b) against a police van, although § 87(2)(b) was standing near the police van. PO Dunne did not see PO Alba strike § 87(2)(b). PO Dunne did not hear Sgt. Harper tell § 87(2)(b) to "shut the fuck up" en route to PSA 7.

Subject Officer Not Interviewed

Sgt. Harper resigned on September 6, 2007, and thus could not be interviewed (encl. 23).

Medical Records

§ 87(2)(b)'s medical records and Ambulance Call Report make no mention of any injury aside from the effects of the pepper spray (encl. 17a-n). The medical records note that there was no swelling to his eyes (encl. 17d).

Police Department Documents

Sprint Report

According to the Sprint Report (encl. 18), 42nd Precinct Housing Post 1 made one arrest at 7:51 p.m. No other units reported responding.

Housing Borough Bronx/Queens IRT Roll Call

According to the roll call (encl. 19a-c), PO Alba and PO Gheorghiu were assigned, respectively, to foot posts 1 and 2. The two officers used vehicle 9417. PO Dunne was Sgt. Harper's operator, and the two officers were in vehicle 9253.

PSA 7 Command Log and Prisoner Holding Pen Roster

According to the command log (encl. 20) and holding pen roster (encl. 21), § 87(2)(b) arrived at the PSA 7 stationhouse at approximately 8:00 p.m. § 87(2)(b)'s physical and mental condition were described as "apparently normal maced." § 87(2)(b) was taken to § 87(2)(b) for medical treatment at § 87(2)(b) and released to his father, § 87(2)(b) at § 87(2)(b). The command log lists the charges § 87(2)(b) § 87(2)(a) Fam. Ct. Act § 381.3.

Search for Juvenile Report

§ 87(2)(a) Fam. Ct. Act § 381.3

Civilian CCRB and Criminal Conviction History

This is the first complaint § 87(2)(b) and § 87(2)(b) have filed with the CCRB (encl. 2a-b). § 87(2)(b) [§§ 86(1) (b)(7)(ii), § 87(2)(g)]

Notice of Claim

The New York City Comptroller's Office found no Notice of Claim related to this incident (encl. 26e).

Police Officer CCRB History

PO Alba has three years of tenure and no previously substantiated CCRB complaints (encl. 2c). During his tenure in the NYPD, Sgt. Harper had no substantiated CCRB complaints resulting in the imposition of discipline (encl. 2d-e).

Conclusions and Recommendations

Officer Identification

All of the civilians involved identified PO Alba by name and/or shield number as the primary officer involved in the physical struggle with § 87(2)(b) and PO Alba confirmed this role. PO Alba and PO Dunne identified Sgt. Harper as the officer who pepper-sprayed § 87(2)(b). Although § 87(2)(b) indicated in his interview that the officer who told him to "shut the fuck up" en route to the stationhouse was an officer other than Sgt. Harper, his description of the officer ((white male, 5'7" tall, thin, black hair, no facial hair) differed only slightly from his description of Sgt. Harper (white male, 5'6" tall, muscular, black hair, wearing a goatee). Further, § 87(2)(b) stated that the officer was seated in the passenger's seat of the vehicle that transported him to the stationhouse. Sgt. Harper was in the passenger's seat of the vehicle en route to the stationhouse. § 87(2)(b), § 87(2)(g)

Assessment of Evidence

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged the PO Alba told her to “get the fuck back” when she initially approached and asked what was happening, while § 87(2)(b) alleged that PO Alba told him to “get the fuck out of [his] face” when § 87(2)(b) stated that the bicycle was too small for § 87(2)(b) to have ridden it. PO Alba and PO Dunne, in contrast, alleged that § 87(2)(b) escalated the situation from the beginning by repeatedly cursing at the officers. While PO Alba acknowledged that he initiated physical contact with § 87(2)(b) by tapping § 87(2)(b) on the shoulder, but stated that he did this only after § 87(2)(b) had refused to comply with repeated instructions to move back.

PO Alba stated that he proceeded to grab § 87(2)(b) by the shirt and place him against the police van such that the two were facing each other when § 87(2)(b) tensed his fists at his sides and said, “Don’t fucking touch me. Get the fuck off of me before I knock you out.” § 87(2)(b) acknowledged threatening to “knock out” PO Alba, but stated that he did so because PO Alba grabbed him when he was already walking away, carried him to the van, and pushed him against it.

PO Alba acknowledged taking § 87(2)(b) to the ground, but stated that he did so because § 87(2)(b) was attempting to push the officer’s hands away. § 87(2)(b) in contrast, denied physically resisting. PO Alba denied striking § 87(2)(b) but § 87(2)(b) and § 87(2)(b) both alleged that PO Alba struck § 87(2)(b) multiple times in his face. § 87(2)(b) stated that PO Alba wore a pair of black leather gloves as he did this. PO Alba denied holding § 87(2)(b) against the ground by placing his forearm against the back of § 87(2)(b) s head, as was alleged.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Recommended Dispositions

Allegation A: At § 87(2)(b) in the Bronx, Police Officer Wilson Alba spoke obscenely and/or rudely to § 87(2)(b)
As noted above, § 87(2)(b) missed appointments for interviews on August 24 and 30, 2007, without notifying the investigator. § 87(2)(b) made no subsequent attempt to contact the investigator, and § 87(2)(b), the only civilian to provide a sworn statement, did not allege that PO Alba told § 87(2)(b) to “get the fuck back.” § 87(2)(g)

Allegation B: At § 87(2)(b) in the Bronx, Police Officer Wilson Alba spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(b) alleged that PO Alba told him, “Get the fuck out of my face.” § 87(2)(b), § 87(2)(g)

Allegation C: At § 87(2)(b) in the Bronx, Police Officer Wilson Alba used physical force against § 87(2)(b).

§ 87(2)(b) alleged that, in addition to pushing him against the police van and taking him to the ground, PO Alba punched him multiple times in the face and held a forearm against the back of his head. § 87(2)(b)

§ 87(2)(b) denied resisting at any point. § 87(2)(b), § 87(2)(g)

According to Patrol Guide Procedure 203-11 concerning the use of force, officers are justified in using “that amount of force necessary to overcome resistance” in effecting an arrest (encl. 1a). § 87(2)(b), § 87(2)(g)

Allegation D: At § 87(2)(b) in the Bronx, Sergeant Lawrence Harper used pepper spray against § 87(2)(b)

Allegation E: En route to the PSA 7 stationhouse, Sergeant Lawrence Harper spoke obscenely and/or rudely to § 87(2)(b)

As noted above, Sgt. Harper resigned on September 6, 2007. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: